No. 16,494

United States Court of Appeals

For the Ninth Circuit

WILLIE A. DAVIS,

Appellant,

vs.

AETNA LIFE INSURANCE COMPANY, CHARLES S. SWANEGAN, DAISY SWANEGAN, and LLOYD W. SWANEGAN, as Administrator,

Appellees.

Upon Appeal from the United States District Court, Southern District of California, Southern Division.

APPELLANT'S OPENING BRIEF.

GARRY, DREYFUS, MCTERNAN & KELLER,
703 Market Street,
San Francisco 3, California,
Attorneys for Appellant.

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STATEMENT OF THE PLEADINGS AND FACTS DISCLOSING BASIS FOR JURISDICTION.

This case was instituted in the District Court upon a complaint for interpleader filed by Aetna Life Insurance Company. (Tr. p. 2.) As the basis for jurisdiction of the District Court, the complaint alleges that the plaintiff is a corporation incorporated under the laws of the State of Connecticut, that defendants Willie A. Davis and Lloyd W. Swanegan are citizens of the State of California, that defendants Charles

S. Swanegan and Daisy Swanegan are citizens of the State of Oklahoma, and that thereby diversity of citizenship exists. The amount involved is alleged to be in excess of $3,000.00. The foregoing allegations of fact were and are undisputed. The District Court, upon motion for summary judgment filed by defendants Charles and Daisy Swanegan, entered summary judgment against appellant.

The decision was appealed to this Court by Notice of Appeal, dated August 19, 1958. (Tr. p. 60.)

The decision of the District Court is a final decision and the appeal therefrom is within the jurisdiction of this Court of Appeals. (Title 28 U.S.C.A. Sec. 1291.)

STATEMENT OF THE CASE.

Appellant appeals from a summary judgment rendered by the District Court to the effect that appellant take nothing on his claim to the proceeds, amounting to approximately $9,000.00, of two insurance policies on the life of appellant's wife.

The judgment of the lower court was made on a complaint for interpleader filed by the Aetna Life Insurance Company and upon the pleadings thereto and affidavits and other documents supplied to the court.

The interpleader complaint sets forth, in essence, that appellant is the named beneficiary under two employee group policies issued by Aetna, that Charles and Daisy Swanegan are respectively the father and

mother of the deceased wife and that Lloyd W. Swanegan is the administrator of the estate of the deceased wife. The complaint then alleges that the deceased was killed by the act of her husband, appellant here, and that her husband pleaded guilty to the crime of voluntary manslaughter in the state Superior Court for San Diego County and was duly sentenced on such plea.

At a hearing on a motion for summary judgment field by the parents of the deceased, a certified copy of the record of the criminal proceeding was introduced, showing the plea of guilty and conviction thereon. Upon that record the District Court entered judgment denying appellant's claim. During these proceedings appellant was confined in prison, was not represented by counsel and was afforded no opportunity to contest the granting of the motion or to offer evidence concerning the facts which led to his wife's death.

Appellant here seeks reversal of the decision of the District Court on the grounds that the lower court should have ascertained, upon evidence, the actual legal nature of the homicide, that if such evidence had been taken the homicide would have been determined to be involuntary manslaughter, and that appellant was and is entitled to the proceeds of the policies.

ARGUMENT.

A. THE DISTRICT COURT FAILED TO COMPLY WITH ITS DUTY TO ASCERTAIN THE FACTS CONCERNING THE HOMICIDE.

It is the province and duty of the court considering the insurance claim to examine the facts upon which the criminal conviction was based, and not to make its ruling solely on the basis that the insurance claimant was convicted in a criminal proceeding, even in the case of a plea of guilty to the criminal charge.

In *Prudential Ins. Co. of America v. Harrison* (D.C. Cal. 1952), 106 F.Supp. 419, the court said (p. 422):

> "The Court rejects the offered evidence of conviction of manslaughter and the recommendation of the sentencing Judge. These have been urged as the basis for rejection of the wrongdoer's claim. It is the duty of this Court to examine the facts itself and make its own determination, without suggestion from the judgment of court which adjudicated the criminal case."

The same view, namely that the court hearing the interpleader action must exercise its own independent judgment on the facts involved in the homicide, is expressed in *Manufacturers Life Ins. Co. v. Moore,* (D.C. Cal. 1953), 116 Fed. Supp. 171. In this case the beneficiary was tried on a charge of murder and the Superior Court upon a verdict adjudicated that she was guilty of manslaughter in connection with the death of her husband, the insured.

The court states:

> "No one urges *res adjudicata* here, recognizing the applicability of the well-known rule that to

> apply the principle would require that the murder trial be between the same litigants, whereas the record shows that the litigants here were not all adversaries there. This Court must make its own analysis of the facts and reach its own conclusions." (p. 173)

The appellant here was not represented by counsel in the District Court, was confined in prison and was not advised that he could give evidence or even file an affidavit concerning the events which caused the death of his wife. We submit that he should be given an opportunity to do so. We hereby offer to prove, if opportunity is given, that appellant engaged in an argument with his wife when they were in bed in their home, that appellant rose to leave the house and took from under the mattress a gun which he kept there, that a tussle over possession of the gun then ensued, during which tussle the gun discharged and the wife was hit and fatally wounded. Appellant immediately called an ambulance and the police. The police arrived first and took him to jail.

We submit that the actual facts of the homicide indicate that it was involuntary manslaughter. Appellant has been denied his rights under the policies in question by summary judgment, without being given a chance to show what really happened. He should be given that chance.

B. A BENEFICIARY GUILTY OF INVOLUNTARY MANSLAUGHTER IS NOT PRECLUDED FROM RECEIVING THE PROCEEDS OF THE POLICY.

The leading ruling on this point in California is in the case of *Throop v. Western Indemnity,* 49 Cal. App. 322, 193 Pac. 263, holding that involuntary manslaughter amounts to an "accident" within the terms of an insurance policy, and further ruling that a "death which is unintentional, though caused by some neglect or unlawful act of the beneficiary, is within the contract, and ought not to defeat the policy." (P. 325, quoting from *Schreiner v. High Court of Foresters*, 35 Ill. App. 576.)

A clarifying discussion of the courts' rulings and attitudes on this aspect of the case appears in a note in 15 So. Cal. Law Review, at page 103.

This note, discussing the decision in *Metropolitan Life Ins. Co. v. McDavid* (D.C. Mich. 1941), 39 Fed. Supp. 228, is quoted from with apparent approval in *Prudential Ins. Co. v. Harrison,* supra, p. 4. The note states:

> "All the courts seem to agree that murder of the insured by the beneficiary bars a recovery of the benefits. The courts also seem to agree that involuntary manslaughter of the insured, by the beneficiary, does *not* bar recovery."

The Law Review note observes that the reason most often given by the courts for their decisions in these cases is that "public policy forbids that contracts shall receive such an interpretation as will encourage crime, and that to hold otherwise would be to furnish the

party interested the strongest temptation to bring about, if possible, the event insured against." It is, however, clear, the note continues, that the crime of involuntary manslaughter is not of such a nature that allowing recovery by the beneficiary would encourage its commission.

Appellant here maintains that in actual fact he was not guilty of intentionally causing the death of his wife, and that to allow recovery of insurance proceeds in such a case would in no way encourage the commission of intentional homicides for the purpose of collecting insurance benefits.

C. THE PROVISIONS OF THE CALIFORNIA PROBATE CODE CONCERNING SUCCESSION ARE NOT APPLICABLE HERE.

The District Court found below that "the law and public policy of the State of California provides that a person who is convicted of the crime of voluntary manslaughter cannot recover insurance proceeds of insurance policies on the life of said person". (Tr. p. 49.) It is submitted that such is not either the law or public policy of this state.

Section 258, Probate Code, provides that:

> "No person convicted of the murder or voluntary manslaughter of the decedent shall be entitled to any portion of the estate; but the portion thereof to which he would otherwise be entitled to succeed goes to the other persons entitled thereto under the provisions of this chapter."

However, it has been held that the foregoing Probate Code section applies only to succession in probate and does not govern the claim of a husband named as beneficiary to the proceeds of an insurance policy, where the husband has pleaded guilty to manslaughter in connection with the wife's death.

Prudential Ins. Co. v. Harrison, (D.C. Cal. 1952), supra, p. 4.

See also:

In re Lipholm's Estate, 79 C.A. 2d 467, 179 P. 2d 833.

Manufacturers Life Ins. Co. v. Moore, supra p. 4, holds that a conviction of manslaughter does not control the right of a widow, who shot her husband, to receive the proceeds of a policy on her husband's life, since any rights of the beneficiary arose under the laws of contract and insurance.

CONCLUSION.

We submit that it has been amply demonstrated that this court should reverse the summary judgment of the District Court, and that the case should be sent back for proper hearing and consideration in accordance with the decisions and views presented in this brief.

Dated, San Francisco, California,
December 18, 1959.

GARRY, DREYFUS, MCTERNAN & KELLER,
By CHAS. R. GARRY,
Attorneys for Appellant.